



September 20, 2002

Ms. Dona G. Hamilton
Vice President for Legal Affairs
University of Houston
311 E Cullen Building
Houston, Texas 77204-2028

OR2002-5314

Dear Ms. Hamilton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171139.

The University of Houston Law Center (the “university”) received a request for information relating to the law center’s admission of transfer students. You explain that the request has since been modified and narrowed in accordance with communications with the requestor. *See* Gov’t Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You inform us that the university has provided the requestor with a list of students admitted as transfer students for the fall 2002 semester. You state that the requestor also seeks access to transcripts and LSDAS reports and/or LSAT scores for students admitted to the law center as transfer students for the fall 2002 semester. The university claims that this information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g. We have considered the exceptions you raise and have reviewed the representative sample of requested information you submitted.¹

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

Section 552.114(a) of the Government Code excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995).

In this instance, the university has submitted the responsive information that it believes to be subject to FERPA. We agree that FERPA is applicable to this information. Generally, FERPA requires that information be withheld from the public only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978). We have marked the types of information that would tend to identify the student to whom the submitted information pertains. *See* 34 C.F.R. § 99.3 (defining personally identifiable information). The university must withhold the marked information under FERPA. The rest of the submitted information is not excepted from disclosure under FERPA and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

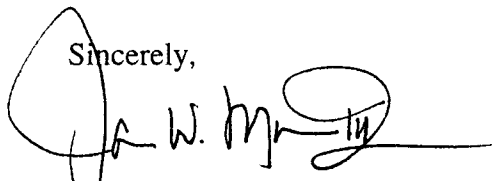
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a large, stylized initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 171139

Enc: Marked documents

c: Mr. Joshua S. Clover
1119 Jerome Street
Houston, Texas 77009
(w/o enclosures)